

Fac/Perm/Co ID #	Date	Doc ID#
38-03T	11, 8, 12	17627



RECEIVED

NOV - 7 2012

SOLID WASTE SECTION  
ASHEVILLE REGIONAL OFFICE

SCANNED  
9/10/15 *cf*

Allen Gaither  
North Carolina Dept. of Environment and Natural Resources  
Asheville Regional Office  
Division of Waste Management - Solid Waste Section  
2090 U.S. 70 Highway  
Swannanoa, NC 28778

11/5/12

Mr. Gaither,

Enclosed is the information you needed to start the permit process on the proposed Solid Waste Transfer Station for Graham County. As requested, I have provided:

- The current operations plan
- Letter in regards to zoning
- Proposed site plan
- Parcel plan with floodplain location

The location of the proposed facility is on the south side of Tallulah Road at the intersection of US Hwy 19/129 and SR 1202 (Jack Branch Rd.) in Graham County. If there is any additional information you need please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gregory Cable", is written over a horizontal line.

Gregory Cable  
Graham County Manager  
12 N. Main St.  
Robbinsville, NC 28771  
828-479-7960  
[greg.cable@grahamcounty.org](mailto:greg.cable@grahamcounty.org)

RECEIVED

NOV - 7 2012

SOLID WASTE SECTION  
ASHEVILLE REGIONAL OFFICE



## OPERATIONS PLAN

### SOLID WASTE TRANSFER STATION

### GRAHAM COUNTY, NORTH CAROLINA

2012



# OPERATIONS PLAN

## SOLID WASTE TRANSFER STATION GRAHAM COUNTY, NORTH CAROLINA

### Table of Contents

#### Section

#### I.....Introduction

- A.....Purpose of Plan
- B.....Facility Location
- C.....Service Area

#### II.....Operations Procedures

- A. Overview
- B. Personnel
- C. Characterization of Waste Stream
- D. Inspection of Wastes
- E. Traffic Control
- F. Housekeeping, Litter, and Vector Control
- G. Dust and Fire Control
- H. Wastewater Collection
- I. Storm Water Management and Erosion Control
- J. Zoning
- K. Facility Inspections

#### Appendices

- 1. Flow Acceptance Letter from Robbinsville W.W.T.P.
- 2. Zoning Letter From Graham County
- 3. Waste Screening Inspection Form
- 4. Lease of Property
- 5. Property Deed for proposed new site

OPERATIONS PLAN  
SOLID WASTE TRANSFER STATION  
GRAHAM COUNTY, NORTH CAROLINA  
2012

I. INTRODUCTION

A. Purpose of Plan

This operations plan has been developed for the proposed Solid Waste Transfer Station located in Graham County, North Carolina. This plan has been prepared in accordance with the requirements of the North Carolina Department of Environment, Health, and Natural Resources (DENR), Division of Solid Waste Management, Solid Waste Rules (15A NCAC 13B).

B. Facility Location

The Solid Waste Transfer Station is located on property owned by Mr. Herve Cody and located approximately 1 mile south west of Robbinsville, North Carolina on S.R. 1127 (Snowbird Road). The County is currently leasing approximately 4.8 acres of this property. This leased property will contain the transfer station, scale house facility, recycling bins and household drop-off dumpsters. A copy of the lease agreement was forwarded to the NCDENR, Division of Waste Management, Solid Waste Section. \*

Graham County is currently proposing a new location for the Solid Waste Transfer Station approximately seven (7) miles southeast of Robbinsville, N.C. on Hwy 129 South with approximately 11.72 acres of land. Attached as Appendix 5 are the drawings for the new location site including the 100 year flood zone and the property records. The proposed site will contain the transfer station, scale house facility, recycling bins and household drop-off dumpsters.

C. Service Area

The Transfer Station will provide service for all of Graham County.

II. OPERATIONS PROCEDURES

A. Overview

The Transfer Station will consist of a pre-engineered metal building with an approximate 2,400 ft tipping floor and lowered access / loading corridor for transfer trucks. Incoming waste collection vehicles will deposit municipal solid waste (MSW) and construction and demolition (C /D) waste directly onto the concrete tipping floor of the facility. Once the MSW & C/D has been dumped onto the tipping floor, it will be inspected for illegal wastes and/or hazardous

wastes. Illegal and hazardous wastes will be diverted from the waste stream and disposed of properly in a hazardous waste landfill. Once the waste has been inspected for unacceptable materials, a loader will push the remaining waste to the rear of the tipping floor where it will be dropped into a transfer truck on the lower level. The waste will then be transferred to the Pine Bluff Landfill Permit #028-039D"SL" in Ballground, Georgia

Normal working hours for the Transfer Station are 7:30 a.m. to 4:00 p.m., Monday through Friday and 7:00 a.m. to 3:00 p.m. on Saturday. The facility is closed on Sunday and the following holidays: New Year's Day, Independence Day, Thanksgiving Day, and Christmas Day.

#### B. Personnel

The facility is owned and operated by Graham County. A minimum of two (2) staff employees is required for the daily operation of the Transfer Station. These employees are properly trained in safety procedures and the inspection of incoming wastes (refer to section D, "Inspection of Wastes"). Training material published by the Solid Waste Association of North America (SWANA) is utilized for initial training of on-site personnel and for continuing education. The Transfer Station employees also direct and coordinate the movement of collection vehicles into and out of the Transfer Station.

#### C. Characterization of Waste Stream

Graham County currently receives approximately 7000 tons of waste each year. Approximately 1,400 tons (20%) of the County's waste stream is construction/demolition waste. Approximately 5,600 tons (80%) of the County's waste stream is MSW waste.

On or before August 1<sup>st</sup> of each year, the owner or operator shall report to the North Carolina Solid Waste Section, for the previous year beginning July 1<sup>st</sup> and ending June 30<sup>th</sup>, the amount by weight of the solid waste that was received at the facility and disposed of in a landfill, incinerated, or converted to fuel. To the maximum extent practicable, such reports shall indicate by weight the county of origin of all solid waste. The owner or operator shall transmit a copy of the report to the county in which the facility is located and to each county from which waste originated.

The transfer station will only accept municipal solid waste, construction/demolition waste, and non-hazardous industrial waste generated in Graham County. Graham County will notify the division within 24 hours of any attempts to dispose of non-permitted waste.

The following wastes are prohibited from disposal at the transfer facility:

Hazardous waste as defined within 15A NCAC 13A, including hazardous waste from conditionally exempt small quantity generators.

Polychlorinated biphenyls (PCB) waste as defined in 40 CFR 761.



Liquid wastes will not be accepted at the transfer facility.

Wastes prohibited by Statute GS 130A-309.10 of the North Carolina Solid Waste Management Rules. These wastes include:

- Wooden pallets
- Used oil and oil filters
- Yard trash
- White goods
- Antifreeze (ethylene glycol)
- Whole scrap tires
- Lead acid batteries
- Computer Equipment and Televisions
- Plastic bottles or containers
- Fluorescent lighting ballasts and bulbs

#### D. Inspection of Wastes

Access to the Transfer Station is controlled by properly trained employees, located at the entrance of the facility. As the contents of the collection vehicles are emptied onto the tipping floor, an employee will conduct periodic visual inspections of the waste materials. If unacceptable waste is found, the driver of the vehicle will be instructed to terminate dumping and the unacceptable waste will be reloaded onto the vehicle for removal from the site. Examples of unacceptable wastes include large containers of liquid waste, sludge's, drums that have not been emptied and crushed prior to delivery, and containers either smoking or emitting noxious vapors.

Graham County shall implement a program at the transfer station for detecting and preventing the disposal of unacceptable waste, especially hazardous or liquid waste. The program will include the following:

Transfer station personnel will conduct random inspections of incoming loads. Inspections will occur at the transfer station on the tipping floor. The load will be carefully spread by a front-end loader with personnel trained to identify unacceptable waste, especially hazardous and liquid waste. If unacceptable waste is found, the driver of the vehicle will be instructed to terminate dumping and the unacceptable waste will be reloaded onto the vehicle for removal from the site. The frequency of the random inspections will be based on the type and quantity of waste, but not less than one inspection per week.

If hazardous waste is identified during vehicle dumping, facility personnel will immediately notify the driver and if necessary, contact NCDENR and the Hazardous Materials Emergency Response Team. The appropriate information concerning the waste will be provided to those officials and the recommended steps will be taken until properly trained handlers of hazardous waste arrive on-site. A sign with the words "No Hazardous or Liquid Wastes Accepted" shall be posted on an entrance sign.

Transfer Station personnel will maintain records of each load inspection. These records will be maintained in the operating record of the transfer facility. A copy of the Waste Inspection Form has been included in Appendix 3.



Waste shall not be stored on the tipping floor after operating hours and the tipping floor and the transfer trailer loading area shall be maintained in sanitary, clean condition after operating hours.

Infectious or medical waste haulers are advised that the Transfer Station does not accept such wastes and that the hauler will have to transport the infectious wastes to an approved facility for disposal.

Should a "hot load" occur in a vehicle using the facility; the attendant will not permit the load to be discharged onto the tipping floor. The vehicle operator will be advised to move the vehicle to a gravel or paved area located outside the Transfer Station where the load will be discharged. The local fire department will be notified prior to discharge to identify the cause of the problem and extinguish the load fire. Once the load has been extinguished and the cause determined, the load will be taken into the facility for disposal. No asbestos or animal wastes will be accepted at the Transfer Station.

The above limitations on the types of wastes that will be accepted do not circumvent the incidental wastes that may be found in the residential waste stream that is expected at the facility.

#### E. Traffic Control

Site personnel control access to the Transfer Station. A gate controls the entrance to the transfer station facility. As vehicles arrive at the Transfer Station, site personnel will direct the driver to position the vehicle at the correct unloading location once there is sufficient room to maneuver on the concrete floor. When the contents of the vehicle are emptied, the driver is instructed to move the vehicle away from the tipping floor and exit the Transfer Station.

During times when several vehicles are at the Transfer Station at the same time, haulers are instructed to wait within the staging area located outside the entrance to the building.

#### F. Housekeeping, Litter, and Vector Control

Incoming wastes will be transported to the Transfer Station in covered or enclosed vehicles. Outgoing transfer trailers will also be covered or enclosed. Throughout the day and at the end of each working day, facility personnel will police the building and surrounding site for litter. Collected litter is placed in containers for proper disposal. Two yard hydrants will be available to wash down the concrete tipping floor, lower level floor and adjacent equipment areas when needed. The equipment used for pushing trash on the tipping floor will also have a bucket equipped with a squeegee. Wash down water flows into a trench drain located just inside of the building entrance on the upper level and in the middle of the lower level. The drains will be covered by metal grates to block large debris that might enter the wastewater piping. The metal grate is raked periodically and the collected trash is placed into containers for proper disposal. The drains are connected to a six (6) inch sewer line that flows to a gravity sewer.

Odors are controlled by prompt unloading and transfer of all delivered wastes at the Transfer Station. The open sides of the building and wall mounted ventilation fans located above the transfer trailer will provide adequate fresh air exchange to control odor problems.

The daily removal of solid waste in conjunction with daily housekeeping procedures effectively controls the development of vector related problems. The tipping floor is constructed of concrete, which is an impervious, readily cleanable material. Floor and equipment wash-downs at the Transfer Station will also reduce both odor and vector problems. As described previously, wash water will be diverted to drains that connect to a gravity sewer. Licensed exterminators will also be available to visit the Transfer Station as needed.

#### G. Dust and Fire Control

Periodic wash down of the tipping floor and equipment will prevent excessive build-up of dirt and dust at the facility.

Fire Control is provided by portable hand-held fire extinguishers as well as a yard hydrant located just outside the building. Fire protection will be provided by the local fire department, which is aware of the fire control needs for the facility. In the event that a fire occurs, the local authorities will be notified immediately. The telephone numbers of local fire, police, ambulance and hospital facilities are posted in and around the facility at all times. In the event of a fire at the facility the NCDENR will be notified within 24 hours and written notification will be submitted within 15 days.

#### H. Wastewater Collection

Wastewater flow at the Transfer Station will consist of wash down water from the tipping floor and lower level. On the tipping floor, wash down water will be collected by a trench drain located near the station entrance. Lower level wash down water will be collected in a catch basin located in the center of the lower level. Wash down water from the two areas will flow through gravity lines to a sewer that is part of the wastewater collection system of the Town of Robbinsville. To ensure that rainwater does not enter the waste water lines, a metal roof covers the building and the driveways is sloped away from the transfer station floor. The maximum volume of wastewater and wash down water is estimated to be 1,500 gallons per day. A copy of the acceptance letter from the Robbinsville W.W.T.P. is included in Appendix 1. \*

#### I. Storm Water Management and Erosion Control

Areas adjacent to the Transfer Station are graded away from the building. Gutters and downspouts will also be positioned on the building to divert discharge of storm water to diversion ditches and storm drains.

Standard erosion control practices, such as silt fencing, vegetating slopes, and diversion ditches will be utilized at the site.



#### J. Zoning

Graham County has no zoning requirements for the Transfer Station properties. Correspondence from Graham County concerning zoning is included in Appendix 2.

#### K. Facility Inspections

Regular maintenance inspections of the facility will be conducted. The inspections will be conducted by site personnel who are familiar with the buildings and equipment at the site, as well as operations of the facility. Monthly inspections, at a minimum, will include inspections of the following.

- Building, foundation, and push walls
- Ventilation System
- Fire Equipment
- Electrical Systems
- Floor drains and yard hydrant
- Sanitary Sewer Service Lane

If unsatisfactory conditions are noted during the inspection or by Transfer Station personnel at any other time, the concerns will be reported to the Graham County Solid Waste Coordinator. If a safety threat to personnel or to the environment is identified, immediate action will be taken to correct the situation. If necessary, operations at the Transfer Station will be suspended temporarily until the proper corrective actions have been taken. In the unlikely event of a severe accident, the proper authorities will be notified and off-site support requested.

APPENDIX 1

Flow Acceptance Letter from Robbinsville W.W.T.P.

*Town of Robbinsville*  
*PO Box 129*  
*Robbinsville, NC 28771*

*Mayor: Bobby Cagle, Jr.*  
*Clerks: Mandy Sharpe*  
*Shari Birchfield*

*Council: Bobby Smith*  
*Jan Brooks*  
*Jacky Ayers*

October 16, 2012

Mr. Greg Cable  
Graham County Manager  
Robbinsville, NC 28771

Dear Mr. Cable

This letter is to notify you that the Town of Robbinsville will accept up to; but not more than 1500 gallons per day of washdown water from the Graham County Solid Waste Transfer Station. This is for washdown only and must contain no solids, except in the trace amounts.

If you have any questions or need further information, please call me at 828-479-6428 or contact the town hall office.

Sincerely



Michael J. Ladd  
ORC, Town of Robbinsville WWTP



APPENDIX 2

Zoning Letter from Graham County

*Graham County Board of County Commissioners*

*Mike Edwards*  
*Chairman*

*12 North Main Street*  
*Robbinsville, NC 28771*

*Billy Holder*  
*Vice-Chairman*

*Connie Orr*  
*Member*

*Phone: 828-479-7961*  
*Fax: 828-479-7988*

*Sandra Smith*  
*Member*

*Raymond Williams*  
*Member*

*Kim Crisp*  
*Clerk*

September 26, 2012

RE: Zoning Requirements  
Current Solid Waste Transfer Station Site  
Graham County, North Carolina

To Whom it May Concern:

The purpose of this letter is to inform you that the property owned by Mr. Herve Cody, and located approximately one (1) mile southwest of Robbinsville along S.R. 1127 (Snowbird Rd.) is not part of the zoned areas of Graham County. Graham County is the sole entity with zoning jurisdiction on this piece of property.

Graham County is in a long term lease with Mr. Cody for approximately 4.8 acres of this property in which the Transfer Station is built. A copy of the lease agreement is attached in Appendix 4.

Sincerely,



Gregory Cable  
County Manager  
Graham County



*Graham County Board of County Commissioners*

*Mike Edwards*  
*Chairman*

*12 North Main Street*  
*Robbinsville, NC 28771*

*Billy Holder*  
*Vice-Chairman*

*Connie Orr*  
*Member*

*Phone: 828-479-7961*  
*Fax: 828-479-7988*

*Sandra Smith*  
*Member*

*Raymond Williams*  
*Member*

*Kim Crisp*  
*Clerk*

September 26, 2012

RE: Zoning Requirements  
Proposed Solid Waste Transfer Site  
Graham County, North Carolina

To Whom it May Concern:

The proposed Graham County solid waste transfer station is approximately seven (7) miles southwest of Robbinsville, NC is not part of the zoned areas of Graham County. The 11.72 acre property is owned by Graham County, and is located at the intersection of Jack Branch and Tallulah Road. This property is further described in Deed Book 210, Page 30 at the Graham County Registry.

A detailed map of the proposed site, is attached in Appendix 5 of the Solid Waste Operations Plan for Graham County.

Sincerely,



Gregory Cable  
County Manager  
Graham County



APPENDIX 3

Waste Screening Inspection Form

GRAHAM COUNTY TRANSFER STATION (US 129)  
COUNTY MANAGER AND BOARD OF COMMISSIONERS  
12 NORTH MAIN STREET  
ROBBINSVILLE, NC 28771  
828/479-7960

RECORD OF WASTE INSPECTION .

Date: \_\_\_\_\_ Time Crossed Scales: \_\_\_\_\_  
Truck Owner: \_\_\_\_\_ Driver's Name: \_\_\_\_\_  
Truck Type: \_\_\_\_\_  
Vehicle ID# or Tag #: \_\_\_\_\_  
Gross Weight: \_\_\_\_\_ Tare Weight: \_\_\_\_\_ Net Weight: \_\_\_\_\_ Tons: \_\_\_\_\_  
Waste Generating Company/Source: \_\_\_\_\_

Reason Load Inspected: \_\_\_\_\_ random inspection \_\_\_\_\_ staff initials  
\_\_\_\_\_ detained by scale house \_\_\_\_\_ staff initials  
\_\_\_\_\_ detained by T.S. operating staff \_\_\_\_\_ staff initials

Description of wasteload: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Disposition: Load Accepted (signature): \_\_\_\_\_ Date: \_\_\_\_\_  
Load Not Accepted (signature): \_\_\_\_\_ Date: \_\_\_\_\_

**\*\* Reason Load Not Accepted: (completed this section only if waste NOT ACCEPTED)**

Description of Suspicious Contents:

\_\_\_\_\_ color \_\_\_\_\_ Haz. Waste markings \_\_\_\_\_  
\_\_\_\_\_ texture \_\_\_\_\_ smell \_\_\_\_\_  
\_\_\_\_\_ drums present \_\_\_\_\_

Approximate cu. yds. in load \_\_\_\_\_  
Approximate tons present in load \_\_\_\_\_

Graham County Emergency Management Contacted: \_\_\_\_\_ Yes \_\_\_\_\_ No  
Hazardous or dangerous materials present: \_\_\_\_\_  
Hauler notified (if waste accepted): \_\_\_\_\_  
Phone #: \_\_\_\_\_ Time person contacted: \_\_\_\_\_  
Other observations: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Final Disposition: \_\_\_\_\_  
Signed by: \_\_\_\_\_ Date: \_\_\_\_\_  
(Waste Screening Inspector or Supervisor)

cc: County Manager

APPENDIX 4

Lease of property



NORTH CAROLINA, GRAHAM COUNTY  
 THE FOREGOING CERTIFICATE OF  
Anom R. Lamban, Jan Millsaps  
 Notary Public/Notaries Public  
 This instrument was filed for record on 20 day  
 of January, 2004 at 3:47 P.M.  
P.M. and recorded in this office in book 239  
 page 185  
Carolyn C. Stewart  
 Register of Deeds  
Lora C. Queen, Deputy

STATE OF NORTH CAROLINA  
 COUNTY OF GRAHAM

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this the 12th day of JANUARY, 2004, by and between Herve Cody and wife, Claudine Cody, of Graham County, North Carolina, parties of the first part, hereinafter referred to as the "Lessor" and Graham County, a North Carolina Body Politic and Corporate, hereinafter referred to as the "Lessee";

WITNESSETH:

In consideration of the rents hereinafter agreed to be paid, and for the further consideration of the mutual covenants and agreements herein contained and subject to the express condition precedents contained hereinafter, the Lessor does hereby lease unto the Lessee, and the Lessee hereby leases and takes from the Lessor, that certain tract or parcel of land situate in the in the Cheoah Township of Graham, North Carolina, being more particularly described in the attachment hereto which is marked Exhibit A, the same being incorporated herein by reference, together with all easements and appurtenances belonging or in anywise appertaining thereto.

This Lease Agreement is subject to the following terms and conditions:

I. TERM OF LEASE

A. The primary term of this Lease Agreement shall commence on the 12th day of JANUARY, 2004, and shall exist and continue for a period of 5 years from the aforementioned date;

B. Provided that the Lessee is not in default under any of the terms of this Lease Agreement, the Lessee shall have the right and option to extend the term of this Lease Agreement for an additional five-year period (Years 6 through 10 ), subject to the same covenants and conditions herein contained upon the Lessee giving to the Lessor written notice of its intention to renew this Lease Agreement for the next extended term at least 90 days in advance of the expiration of the then current term;

C. Provided that the Lessee is not in default under any of the terms of this Lease Agreement and provided that Lessee has exercised its option to renew the original Lease Agreement for the first additional five-year period, the Lessee shall have the right and option to extend the term of this Lease Agreement for an additional five-year period ( Years 11 through 15 ), subject to the same covenants and conditions herein contained upon the Lessee giving to the Lessor written notice of its intention to renew this Lease Agreement for the next extended term at least 90 days in advance of the expiration of the then current term;

D. Provided that the Lessee is not in default under any of the terms of this Lease Agreement and provided that Lessee has exercised its options to renew the original Lease Agreement for the first and second additional five-year periods, the Lessee shall have the right and option to extend the term of this Lease Agreement for an additional five-year period ( Years 16 through 20 ), subject to the same covenants and conditions herein contained upon the Lessee giving to the Lessor written notice



186

of its intention to renew this Lease Agreement for the next extended term at least 90 days in advance of the expiration of the then current term;

## II. RENTAL

A. During the original term of this Lease Agreement, the Lessee shall pay monthly rental in the amount of \$1,300.00, payable monthly in advance on or before the 12TH day of each month.

B. During the first five year renewal option of this Lease Agreement, the Lessee shall pay monthly rental in the amount of \$1,450.00, payable monthly in advance on or before the 12TH day of each month of such renewal option if Lessee exercises such renewal option.

D. During the second five year renewal option of this Lease Agreement, the Lessee shall pay monthly rental in the amount of \$1,600.00, payable monthly in advance on or before the 12TH day of each month of such renewal option if Lessee exercises such renewal option.

E. During the third five year renewal option of this Lease Agreement, the Lessee shall pay monthly rental in the amount of \$1,800.00, payable monthly in advance on or before the 12TH day of each month of such renewal option if Lessee exercises such renewal option.

## III. USE OF PREMISES

A. The demised premises may be used by Lessee to cite, construct and operate a solid waste transfer station and conduct activities related recycling and to the disposal of solid. Lessee shall have the right to cite, excavate, construct and operate a Solid Waste Transfer Station and a Solid Waste Recycling Center and all appurtenances thereto on the demised premises at its sole expense. During the term of the Lease Agreement and any renewals thereof, the improvements constructed upon the demised premises shall be the property of the Lessee. At the end of the term of this Lease Agreement and all renewals of the same, any improvements or fixtures to the demised premises made by Lessee shall be and become the property of the Lessor. At the end of the term of this Lease Agreement and all renewals thereof, the Lessee has no obligation to remove any improvements or fixtures to the demised premises made by the Lessee.

B. The Lessee shall comply with all applicable laws, ordinances and regulations (whether now existing or hereafter enacted) affecting the demised premises as well as its use thereof. The Lessee shall indemnify the Lessor and save the Lessor harmless from and against all claims, actions, damages, liability and expense in connection with loss of life, bodily injury, personal injury and damage to property occurring in or about, or arising out of, the demised premises, occasioned wholly or in part by any act or omission of the Lessee, its agents, licensees, contractors, or invitees. In case the Lessor shall be made a party to any litigation commenced by or against the Lessee, its agents, contractors, or invitees, the Lessee shall protect and hold the Lessor harmless and shall pay all costs, expenses, and reasonable attorney fees incurred or paid by the Lessor in connection with such litigation. The Lessee shall maintain and care for its personal property on the premises, insure the same to such extent as it deems appropriate, and shall neither have nor make any claim against the Lessor for any loss or damage to the same, including, without limitation, theft or burglary, and regardless of the cause thereof.

C. The Lessee shall construct a fence approximately twelve feet in height along or near the West margin of the demised premises within three years.

## IV. ACCEPTANCE OF DEMISED PREMISES

Neither the Lessor nor the Lessor's agents have made any representations with respect to the demised premises that are not set forth in this Lease Agreement. Subject to the express conditions precedent contained hereinafter, taking possession of the demised premises by the Lessee shall be conclusive evidence, as against the Lessee, that the Lessee accepts the same "as is," and suitable for the use intended by the Lessee.

## V. MAINTENANCE AND IMPROVEMENT OF THE DEMISED PREMISES



The Lessee shall maintain the improvements that it is to construct on the demised premises as it deems suitable. The Lessor shall have no obligation to repair or maintain the same.

#### VI. TAXES, ASSESSMENTS AND UTILITIES

A. The Lessor shall list the demised premises for ad valorem taxation and shall promptly pay all such taxes and special assessments levied or assessed against the same.

B. The Lessee shall pay for all water, sewer, gas, electricity, garbage collection, telephone services and other utilities used or consumed by the Lessee upon the demised premises.

#### VII. ASSIGNMENT AND SUB-LETTING

The Lessee may not assign or encumber this Lease Agreement, and may not sublet any part or all of the demised premises without consent of the Lessor first had and obtained. However, Lessor may not arbitrarily refuse to give consent. Provided, however, the Lessee may sublet all or part of the demised premises to one or more of its own stockholders, individually, for the uses and purposes and subject to the terms and conditions herein set forth.

#### VIII. ASSIGNMENT UNDER BANKRUPTCY

In the event that a Trustee or debtor in possession under the Bankruptcy Code of the United States proposes to assume or assign this lease, the Lessor shall be entitled to assurances of future performance of the terms and provisions of this lease, including at a minimum the following:

A. In order to assure that the proposed assignee will have the resources with which to pay the rent called for herein, any proposed assignee must have demonstrated to the Lessor's satisfaction a net worth (as defined in accordance with generally accepted accounting principal consistently applied) at least as great as the net worth of the Lessee on the date this lease became effective, increased by ten percent for each year from the effective date of the lease through the date of the proposed assignment. The financial condition and resources of the Lessee were a material inducement to the Lessor in entering into this lease.

#### IX. DEFAULT

A. If one or more of the following events (herein called events of default) shall occur and shall continue for such time after notice required to be given, is given, as hereinafter provided, to-wit:

(i) If the Lessee shall fail to pay any rent or any other sum due hereunder, when due, in accordance with the terms of this lease and such default shall continue for a period of thirty days after written notice to the Lessee thereof; or

(ii) If the Lessee shall vacate or abandon the premises or fail to operate its business continuously and uninterruptedly therein and such default shall continue for a period of thirty days after written notice to the Lessee thereof; or

(iii) If the Lessee shall fail to keep or perform or abide by any other term, condition, covenant or agreement of this lease and such default shall continue for a period of thirty days after written notice to the Lessee thereof; or

(iv) If the Lessee shall file a petition in bankruptcy or take or consent to any other action seeking any such judicial decree or shall make an assignment for the benefit of its creditors or shall admit in writing its inability to pay its debts generally as they become due, or if any court of competent jurisdiction shall enter a decree or order adjudicating it bankrupt or insolvent, or if any trustee or receiver for the Lessee or for any substantial part of its property be appointed, or if any person shall file a petition for involuntary bankruptcy against the Lessee and such appointment or petition shall not be stayed or vacated within sixty days of entry thereof; or



(v) If the Lessee's interest in this lease or the premises shall be subjected to any attachment, levy or sale pursuant to any order or decree entered against the Lessee in any legal proceeding and such order or decree shall not be vacated within thirty days of entry thereof;

(a) The Lessor, with or without terminating this lease, immediately or anytime thereafter, may re-enter the premises and correct or repair any condition which shall constitute a failure on the Lessee's part to keep or perform or abide by any term, condition, covenant or agreement of this lease. The Lessee shall reimburse and compensate the Lessor as additional rent within thirty days after delivery of any statement by the Lessor to the Lessee for any such expenditures made by the Lessor in making such corrections or repairs.

(b) The Lessor, with or without terminating this lease, immediately or at any time thereafter, may demand in writing that the Lessee vacate the premises. The Lessee shall vacate the premises and remove therefrom all property thereon belonging to the Lessee within thirty days of receipt by the Lessee of such notice from the Lessor, whereupon the Lessor shall have the right to re-enter and take possession of the premises.

(c) The Lessor, with or without terminating this lease, immediately or at any time thereafter, may re-enter the premises and remove the Lessee therefrom and all property belonging to or placed on the premises by, at the direction of, or with the consent of the Lessee.

(d) The Lessor, with or without terminating this lease, immediately or at any time thereafter, may relet the premises or any part thereof for such time or times and at such rent or rents and upon such other terms and conditions as the Lessor in its sole discretion may deem advisable; and the Lessor may make any alterations or repairs to the premises which it may deem necessary or proper to facilitate such reletting. The Lessee shall pay all costs of such reletting, including the costs of any such repairs to the premises; and if this lease shall not have been terminated, the Lessee shall continue to pay all rent due under this lease up to and including the date of beginning of payment of rent by any subsequent Lessee of part or all of the premises, and thereafter, the Lessee shall pay monthly during the remainder of the term of this lease, the difference, if any, between the rent collected from any such subsequent Lessee or Lessees and the rent reserved in this lease, but the Lessee shall not be entitled to receive any excess of any such rents collected over the rents reserved herein.

(e) The Lessor, immediately or at any time thereafter, may terminate this lease without notice or demand to vacate the premises. This lease shall be deemed to have been terminated upon receipt by the Lessee of written notice of such termination and upon such termination the Lessor shall have and recover from the Lessee, all damages the Lessor may suffer by reason of such termination including without limitation, the costs (including legal expenses and reasonable attorney fees) of recovering possession of the premises, the costs of any repairs to the premises which are necessary or proper to repair the same for reletting. In addition thereto, the Lessor, at its election, shall have and recover from the Lessee, either (i) an amount equal to the excess, if any, of the total amount of all rents to be paid by the Lessee for the remainder of the term of this lease over the then reasonable rental value of the premises for the remainder of the term of this lease; or (ii) the rents which the Lessor would have been entitled to receive pursuant to the provisions of subparagraph A. of II above if the lease were not terminated. Such election shall be made by the Lessor giving the Lessee written notice thereof within thirty days of the notice of termination.

B. In the event of any re-entry of the premises by the Lessor pursuant to any of the provisions of this lease, the Lessee hereby waives all claims for damages which may be caused by such re-entry by the Lessor, except such claims as arise from the negligence of the Lessor. No such re-entry shall be considered or construed to be a forcible entry.

C. No course of dealing between the Lessor and the Lessee, or any delay on the part of the Lessor in exercising any rights it may have under this lease, shall operate as a waiver of any of the rights of the Lessor hereunder. Nor shall any waiver of a prior default operate as a waiver of any subsequent default or defaults; and no express waiver shall affect any condition, covenant, rule or regulation other than the one specified in such waiver and that one only for the time and in the manner specifically stated.



D. The exercise by the Lessor of any one or more of the remedies provided in this agreement shall not prevent the subsequent exercise by the Lessor of any one or more of the other remedies herein provided. All remedies provided for in this lease are cumulative and may, at the election of the Lessor, be exercised alternatively, successively or in any other manner and or in addition to any other rights provided by law.

#### X. COVENANTS OF THE LESSOR

The Lessor covenants to and with the Lessee that, except as hereinafter set forth, the Lessor is seized in fee simple of the premises hereby demised and that the same are free and clear of any and all encumbrances. The Lessor agrees that upon the Lessee paying the stipulated rental and keeping and performing the agreements and covenants herein contained, the Lessee shall hold and have the quiet use and enjoyment of the premises for the aforesaid term, subject to however, to the terms of this Lease Agreement.

#### XI. MISCELLANEOUS PROVISIONS

A. All notices authorized or required to the Lessor shall be in writing and be sent by certified mail with prepaid postage addressed to the Lessor at: P.O. Box 218, Robbinsville, NC 28771 and those authorized or required to be given to the Lessee shall be in writing and sent in the same manner to the Lessee at: GRAHAM COUNTY MANAGER, P.O. Box 575, Robbinsville, NC. subject to the rights of either the Lessor or the Lessee to designate by notice in writing a new address to which such notices or demands must be sent. 28771

B. At the end of the term of this lease and all renewals of the same, the Lessee shall be responsible for any environmental issues that its operations have actually caused upon the demised premises.

C. The provisions of this lease shall bind and inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns. Feminine or neuter pronouns shall be substituted for those of the masculine form and the plural for the singular number in any place or places herein where the context may require the same.

C. This lease contains all of the agreements and conditions made between the parties and no statement, promise, or inducement made by any party hereto or agent or employee of either party hereto which is not contained in this written contract shall be valid or binding; and this lease may be modified or amended only by an agreement in writing, signed by all the parties hereto or their respective successors in interest and appended hereto. To the extent that one or more provisions of this agreement may be, by law, declared invalid, void or unenforceable, the remaining provisions of this lease agreement shall remain in full force and effect.

#### XII. EXPRESS CONDITIONS PRECEDENT

A. This Contract of Purchase and Sale is further expressly conditioned upon a determination to Buyer's satisfaction that:

1. Public water and public sewer services are available to the site which will be suitable for its intended use of the demised premises; and

2. That Graham County receive any approvals required by the North Carolina Local Government Commission for this lease and/or the construction of the solid waste transfer station that it is to construct on the demised premises.

IN WITNESS WHEREOF, the Lessor and the Lessee have each executed or caused this lease agreement to be executed in their behalf and in the manner prescribed by law, all the day and year first above written.

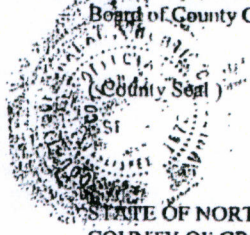


Herve Cody (SEAL)  
Herve Cody

Claudine Cody (SEAL)  
Claudine Cody

Graham County  
By: V. Richard Stewart  
V. Richard Stewart, Chairman, Graham County  
Commissioners

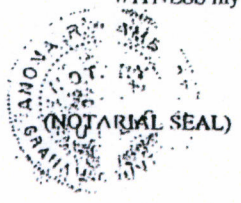
Attest:  
Jan Millsaps  
Jan Millsaps, Clerk to the Graham County  
Board of County Commissioners



STATE OF NORTH CAROLINA  
COUNTY OF GRAHAM

I, Anona R. Lambert, a Notary Public of the aforesaid County and State, hereby  
certify that Herve Cody & Claudine Cody personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Official seal, this the 12<sup>th</sup> day of January, 2007.

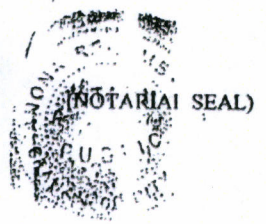


Anona R. Lambert  
Notary Public  
My Commission expires: June 10, 2008

STATE OF NORTH CAROLINA  
COUNTY OF GRAHAM

I, Anona R. Lambert, a Notary Public of the aforesaid County and State, hereby  
certify that Claudine Cody personally appeared before me this day and acknowledged  
the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Official seal, this the 12<sup>th</sup> day of January, 2007.



Anona R. Lambert  
Notary Public  
My Commission expires: June 10, 2008



192

EXHIBIT A TO LEASE AGREEMENT

Being lands lying in the Cheoah Township of Graham County, North Carolina, and being more particularly described as follows:

Being a portion of the lands described in the deed dated January 15, 1991, from William E. McPeters, Jr., Substitute Trustee, to Herve Cody and wife Claudine Cody, recorded in the Office of the Register of Deeds for Graham County, North Carolina, in Book 143, at Page 392, and being more particularly described as follows:

Beginning at an existing iron pipe on the West margin of the right of way for Snowbird Road, Business 143, said point of beginning being a corner common to the lands now or formerly owned by Stanley Furniture described in the deed recorded in Deed Book 113, at Page 805, in the Office of the Register of Deeds for Graham County, North Carolina, and said point of Beginning being located North 12 degrees, 16 minutes, 04 seconds West, 9.06 feet from an existing iron pipe and said point of Beginning also being located South 35 degrees, 02 minutes, 10 seconds West, 438.38 feet from a NCGS Horizontal Control Monument "Stanley AZ MK", Northing = 184354.958 meters, Easting = 172125.659 meters, Scale factor = 0.9998732, NAD 83; runs thence from said point of Beginning along and with the West margin of the right of way for Snowbird Road, Business 143, the following eleven courses and distances: South 19 degrees, 56 minutes, 47 seconds West, 28.02 feet to a point; thence South 17 degrees, 06 minutes, 44 seconds West 28.55 feet to a point; thence South 12 degrees, 36 minutes, 36 seconds West, 37.74 feet to a point; thence South 07 degrees, 38 minutes, 05 seconds West, 37.80 feet to a point; thence South 03 degrees, 39 minutes, 56 seconds West, 49.62 feet to a point; thence South 00 degrees, 12 minutes, 01 seconds West, 31.44 feet to a point; thence South 03 degrees, 16 minutes, 02 seconds East, 50.69 feet to a point; thence South 05 degrees, 45 minutes, 24 seconds East 58.99 feet to a point; thence South 08 degrees, 00 minutes, 33 minutes East, 64.03 feet to a point; thence South 08 degrees, 27 minutes, 16 seconds East, 73.57 feet to a point; thence South 07 degrees, 17 minutes, 51 seconds East, 38.49 feet to a set re-bar; thence leaving the West margin of the right of way for Snowbird Road, Business 143, and running with two divisional lines through the property of Herve Cody, et ux, described in deed recorded in Book 143, at Page 392, in the Office of the Register of Deed for Graham County, North Carolina, runs South 87 degrees, 48 minutes, 47 seconds West, 407.14 feet to a re-bar set; thence North 00 degrees, 43 minutes, 48 seconds West, 564.46 feet to a re-bar set in a line common to the lands now or formerly owned by Stanley Furniture described in the deed recorded in Deed Book 113, at Page 805, in the Office of the Register of Deeds for Graham County, North Carolina; runs thence with the line of the lands now or formerly owned by Stanley Furniture, South 82 degrees, 16 minutes, 04 seconds East, 418.91 feet to the point of Beginning, containing 4.74 acres, be the same, more or less, and being as shown on the unrecorded plat and survey entitled, "Survey for Graham County Recycling Center Being a Portion of the Property of Herve Cody" dated October, 2003, Revised Dec., 2003, Drawing Number 1036. Prepared by Alan C. Carver of Carver Surveying, P.C., Registered Land Surveyor.

Lessor hereby reserves for themselves, their heirs, successors and assigns, a sixty foot wide easement for ingress and egress, the same to be used in common with Lessee, its successors and assigns, the centerline of which is described as follows:

Beginning at a point in the East boundary of the demised premises hereinabove described, the same point being located the following two courses and distances from the Beginning corner of the demised premises hereinabove described: South 19 degrees, 56 minutes, 47 seconds, West 28.02 feet to a point; thence South 17 degrees, 06 minutes, 44 seconds, West 2.65 feet to the point of Beginning of said sixty foot wide easement for ingress and egress; runs thence from said point of Beginning of said sixty foot wide easement for ingress and egress N 82 degrees, 16 minutes, 04 seconds, West 113.64 feet to a point; runs thence with a curve to the left to a point in the West boundary of the demised premises hereinabove described, the same curve having an arc length of 315.78 feet, a chord bearing and distance of South 71 degrees, 53 minutes, 06 seconds, West 305.18 feet, and a radius length of 350.00 feet.

Lessor further hereby reserves unto themselves, their heirs, successors and assigns, the right to convey said sixty foot wide easement unto the North Carolina Department of Transportation, and its successors and assigns.



193

STATE OF NORTH CAROLINA  
COUNTY OF GRAHAM

This instrument has been pre-audited in the manner required by The Local  
Government Budget and Fiscal Control Act.

This the 12<sup>th</sup> day of January, 2004.

Sharon Crisp  
Graham County Finance Officer

**SHLF Revised draft of December 15, 2003**

Return After Recording To:

F. Louis Loyd, III  
Senior Vice President  
Branch Banking and Trust Company  
Post Office Box 31273  
Charlotte, NC 28231

This instrument has been pre-audited in the manner required by The Local Government Budget and Fiscal Control Act.

Shawn Crisp  
Finance Officer  
Graham County, North Carolina

**LEASE ASSIGNMENT AND AGREEMENT  
REGARDING GRAHAM COUNTY'S CONSTRUCTION AND  
FINANCING OF A SOLID WASTE TRANSFER STATION**

STATE OF NORTH CAROLINA )  
GRAHAM COUNTY )

<sup>JANUARY 12, 2004</sup>  
~~THIS AGREEMENT~~ is dated as of ~~December 15, 2003~~, and is by and among GRAHAM COUNTY, NORTH CAROLINA, a public body of the State of North Carolina (the "County"), BRANCH BANKING AND TRUST COMPANY (the "Bank"), and Herve Cody and wife, Claudine Cody (the "Owners").

**RECITALS:**

In September, 2002, the County entered into a Financing Agreement and Deed

NORTH CAROLINA, GRAHAM COUNTY

THE FOREGOING CERTIFICATE OF

Notary Public/Notario Public

This instrument was filed for registration on the 20<sup>th</sup> day

of January, 2004 at 3:49 o'clock

P.M., and recorded in this office in book 239

page 198

Carole C. Stewart  
Register of Deeds



of Trust (the "Financing Agreement") providing for the Bank to advance funds to the County for the County's acquisition and construction of a solid waste transfer station (the "Transfer Station") on certain property in the County. This Financing Agreement was recorded on October 1, 2002, at Book 221, Page 571, Graham County Registry. The Bank's advance of funds to the County under the Financing Agreement, together with the County's obligation to repay those funds with interest over time, is referred to in this Agreement as the "Loan."

The County has now determined that it would be in the County's best interest instead to build the Transfer Station on alternate property, owned by the Owners in Cheoah Township in the County (the "Property"). The Owners have agreed to lease the property to the County for the Transfer Station, subject to certain terms and conditions, as set forth in a Lease Agreement recorded on ~~December~~<sup>JANUARY 12</sup>, 2003<sup>4</sup>, at Book 139, Page 185, Graham County Registry (the "Lease"), and a subsequent Agreement recorded on ~~December~~<sup>Jan. 13</sup>, 2003, at Book 139, Page 194, Graham County Registry (the "First Refusal"). The Lease contains a precise description of the Property, and that description is hereby incorporated into this Agreement by this reference.

The Bank has agreed to allow the County to construct the Transfer Station on the Property with funds made available to the County under the Financing Agreement. The Bank, however, as a condition to this consent, requires the County and the Owners to modify certain provisions of the Lease and the First Refusal. The County and the Owners have agreed to the requested modifications.

The North Carolina Local Government Commission joins in the execution of this instrument for the purpose of evidencing its approval of the modifications effected by this instrument.

This Agreement provides for no additional advance of funds to the County. The scheduled date for the County's final repayment of amounts advanced under the Financing Agreement remains not later than September 12, 2017.

**Now therefore**, in consideration of the execution and delivery of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:



A. Transfer Station to be built on New Property; Lease Assignment.

1. The Bank agrees that the County may use financing proceeds made available to the County under the Financing Agreement to build the Facilities, as defined in the Financing Agreement, on the Property.

2. The Bank agrees that, as requested by the County, the Bank will apply \$250,000 from the Project Fund established in connection with the execution and delivery of the Financing Agreement to the repayment of the County's obligations under the Financing Agreement. This amount will be applied first to the payment of interest accrued and unpaid to the payment date, and then to principal, without premium (notwithstanding the provisions of Section 3.03 of the Financing Agreement). The Bank will make this application of funds upon receiving notice reasonably acceptable to the Bank that this Agreement has been placed of record in the Graham County Registry. The Bank and the County agree that the remaining principal balance of the County's obligations under the Financing Agreement will be re-amortized on the basis of maintaining the dates and amounts of the payments shown on Exhibit D to the Financing Agreement (with a resulting re-allocation of those payments between principal and interest, and a reduction in the overall financing term). The Bank will provide an updated payment schedule to the County and the North Carolina Local Government Commission within 45 days of the Bank's application of funds pursuant to this paragraph, and this updated schedule will take the place of Exhibit D to the Financing Agreement for all purposes.

3. All the County's representations, warranties, covenants and agreements under the Financing Agreement continue to apply in full force and effect, except as expressly modified by the terms of this Agreement. Without limiting the generality of the foregoing,

(a) All provisions of Articles V and VI of the Financing Agreement continue to apply in full effect with respect to the construction, operation and maintenance of the Transfer Station on the Property. The Bank and the County agree that the term "Facilities," as used in the Financing Agreement, will mean the Transfer Station to be constructed on the Property, and that the term "Plans and Specifications" will mean the new Plans and Specifications developed with respect to the Transfer Station and the Property. The County will provide a copy of the new Plans and Specifications to the Bank.

(b) All covenants and representations of Articles III and IV continue in



effect, and the County restates and affirms the representations of Sections 4.02 through 4.10, and Section 4.17, with respect to this Agreement and the transactions contemplated by this Agreement.

(c) The lien on the Site in favor of the Bank, as created under the Financing Agreement (and as defined therein), continues in full force and effect. The Financing Agreement contains a precise description of the Site, and that description is hereby incorporated into this Agreement by this reference. The Bank, however, agrees that the County may sell all or any portion of the Site, and the Bank will release its lien on the Site or such portion to be sold, if the County pays to the Bank for application against the County's obligation to pay Installment Payments an amount equal to the fair market value of the Site (or such portion to be sold). The "fair market value" will be as determined by the Bank in its reasonable discretion. The Bank will cooperate with the County to provide for any such release of a lien in a manner that will facilitate any such sale that is in compliance with the provisions of this paragraph.

(d) The lien on Equipment created in favor of the Bank pursuant to Section 2.03 of the Financing Agreement (and as defined therein) continues in full force and effect. Specifically, but without limitation, this lien applies to the following personal property:

- (i) 2003 MAC Trailer, VIN 5MAMN48283C006480;
- (ii) 2003 MAC Trailer, VIN 5MAMN482C006539; and
- (iii) 2003 Peterbilt 379 Truck, VIN 1XP5D9X83N594672.

4. The County transfers, assigns and conveys unto Bank, its successors and assigns, all of County's right, title and interest in, to and under the Lease subject to the conditions stated below.

(a) This Assignment is made as additional security for the County's performance of all its obligations under the Financing Agreement and other documents evidencing or securing the County's obligations under the Financing Agreement and shall become effective only upon the happening of an event of default by the County under the Financing Agreement.

(b) Incident to this Assignment, the County covenants and agrees with Bank that it will (i) fulfill, perform and observe each and every condition and covenant



contained in the Lease, and (ii) enforce the performance and observance of each and every covenant and condition to be performed or observed by anyone under the Lease.

(c) The County agrees that upon the condition precedent of a default by County under the Financing Agreement, the County transfers, assigns and conveys unto Bank, its successors and assigns, all of County's right, title and interest in, to and under the Lease, together with all of County's right, title and interest in any improvements located upon the demised premises. The Bank will give prompt written notice to the Owners upon this Assignment's taking effect after an event of default under the Financing Agreement.

(d) The County represents and warrants as follows: (i) that it is the sole tenant under the Lease and is the sole owner of the tenant's interest thereunder; (ii) that it has not previously assigned the Lease or any interest therein, for security or otherwise, or sublet the demised premises in whole or in part; (iii) that it has the full right and authority to assign, with the consent of the Owners thereunder, the Lease and all the tenant's rights and options contained therein and that it knows of and there exists no circumstance which would prevent this Assignment from being valid and binding in all respects; (iv) that the Lease is valid and enforceable in accordance with its terms and has not been altered, modified or amended in any manner and that as of the date hereof the Lease is in full force and effect; and (v) that the County is not in default under any of the terms, covenants or conditions of the Lease and that there exists no circumstances or conditions which, either now or by the passage of time, would constitute a default in the terms of the Lease or would entitle the Owners thereunder to terminate the Lease or to abridge the tenant's rights thereunder.

(e) To the extent permitted by law, the County shall defend, indemnify and save Bank harmless from any losses, costs or expenses, including without limitation attorney's fees arising out of or in any way relating to any breach of any warranties made by the County herein or any action, judicial or otherwise, of the Owners under the Lease, whenever asserted, contesting or challenging the validity of this Assignment.

#### **B. Agreements of the Owners.**

In consideration of the Bank's agreement to modify the terms of the Financing Agreement, and thereby facilitate the County's entering into the Lease and the First



Refusal, the Owners make the representations, covenants and agreements set forth below, for the benefit of the Bank and the County.

1. The Owners consent to the lease assignment provided for in Section A4 of this Agreement.
2. The term of the Lease, as provided for in Part I of the Lease, will be automatically extended for so long as any portion of the Loan is outstanding, without the need for the County to provide 90-day advance notice of its intention to renew the Lease.
3. The Owners agree that the Bank shall have the right to renew the Lease, without regard to the status of the Loan, through the third five-year renewal term provided for in the Lease, if the Bank is in possession of the Property after a default by the County under this Agreement or the Financing Agreement. Any renewals to be made by any entity in possession of the Property other than the County, however, are subject to the 90-day advance notice requirements set forth in the Lease. In this case, the Owners will accept notice of renewal from the Bank or any entity in possession of the Property.
4. If (a) any portion of the Loan is outstanding or (b) the Bank is in possession of the Property after a default by the County under this Agreement or the Financing Agreement, then (i) the Bank may exercise the right to purchase the Property provided for in the First Refusal if the County has declined an offer to sell pursuant to the First Refusal (but the Bank will in any event have 45 days from the date of the County's declining to consummate any purchase), (ii) any sale or encumbrance of the Property (including any sale to the County pursuant to the First Refusal) must be made subject to the rights of all parties under the Lease and this Agreement, and (iii) the Owners will impose no restrictive covenants and request no changes in the zoning of the property, without the Bank's prior written consent.
5. The Owners agree that the limitation on the use of the Property provided for in Part III(A) of the Lease will not apply to the Bank if the Bank is in possession after a default by the County under this Agreement or the Financing Agreement.
6. The Owners will not exercise any remedy provided for under the Lease until 90 days after the Owners provide notice to BB&T describing the nature of the County's default under the Lease. The Owners will accept performance by the Bank that is curative of any event of default as if the County rendered such performance.



It is expressly provided that if the only continuing event of default is the County's failure to pay rent in full and on time, then if the County and the Bank, separately or in combination, during the 90-day waiting period described in the preceding paragraph, pay to the Owners the amount of any and all rental payments that are in default, then such event of default shall automatically be deemed cured and be of no further effect.

7. The Owners will send to the Bank a copy of any notices sent to or received by the Owners under this Agreement, the Lease or the First Refusal.

8. (a) The Owners covenant with the County and the Bank that the Owners are seized of and have the right to convey the Property in fee simple, that the Property is free and clear of all liens and encumbrances other than as described in the following paragraph, that title to the Property is marketable, and that the Owners will forever warrant and defend title to the Property against the claims of all persons.

(b) The Owners represent, warrant and covenant to the County and the Bank that there are no mortgages or similar liens or encumbrances on the Property, and that the Property is not subject to any reverters, rights of re-entry, restrictive covenants or similar restrictions that could cause the Owners to lose title to the Property.

9. (a) The County and the Owners, each for itself, warrant and represent to the Bank as follows:

(i) The following is an accurate and complete statement of the recent uses of the Property: The County has leased the Property from the Owners for approximately 10 years. The County has used the Property as the location of a recycling center. Prior to the County's use, the Property was a portion of a larger site of a sawmill; the Property was used during this time as a loading dock and lumber yard. The Owners acquired the Property from the company that (directly or indirectly) operated the sawmill, and did not put the Property to any active use prior to the lease to the County.

(ii) The Property is in compliance with all federal, State and local environmental laws and regulations.

(iii) The County has obtained and will maintain all licenses, permits and approvals required with respect to the maintenance or use of



environmentally-regulated substances at the Property, and is in compliance (and will maintain compliance) with all of the terms, conditions and requirements of such licenses, permits and approvals.

(iv) The Owners and the County will promptly notify the Bank of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Property or used in connection therewith, and will promptly send to the Bank copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Property.

(b) The Owners and, to the extent permitted by law, the County, will indemnify and hold the Bank harmless from and against (i) any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against the Bank as a direct or indirect result of any warranty or representation made by the County in subsection (a) above being false or untrue in any material respect, or (ii) any requirement under any law, regulation or ordinance, local, State or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by the Bank, the Owners or the County or any transferee or assignee of the Bank.

(c) The obligations of the County and the Owners under this Section shall continue in full effect notwithstanding full payment of the Loan or the Bank's exercise of any remedies under this Agreement or the Financing Agreement.

**C. County's further agreements.**

The County makes the covenants, representations and agreements set forth below, for the benefit of the Bank and Owners.

1. The County accepts the environmental covenants and warranties set forth in Section B9 above.

2. The County represents and warrants that it has applied a portion of the proceeds made available to it under the Financing Agreement to costs related to preparing the Site as the location of the Facilities.



3. The County will send to the Bank copies of any notices sent to or received by the County pursuant to the Lease, the First Refusal or this Agreement.

4. If the Bank expends any funds or incurs any expense to enforce any provisions of this Agreement, or to cure any default by the County under the Lease, this Agreement or the Financing Agreement, such an advance will be deemed made pursuant to Section 4.13 of the Financing Agreement, and repayment to the Bank of such amount will be secured as an Additional Payment under the Financing Agreement (and as defined therein).

5. The County will provide for there to be delivered to the Bank, not later than April 1, 2004, a mortgagee title insurance policy in form and substance reasonably acceptable to the Bank. In particular, the policy must show a state of the title consistent with the representations of the Owners set forth in Section B8(b) above. It is expressly acknowledged by the County that a delay in providing the policy, or any discrepancy between the encumbrances shown on the policy and the provisions of such Section B8(b), will constitute events of default under the Financing Agreement and this Agreement.

6. If at any time the County becomes the owner of the Property, whether pursuant to a purchase pursuant to the First Refusal or otherwise, then the County and the Bank agree that it is the intent of the parties that, for purposes of the Bank's interests under this Agreement, the County's estates as owner and lessee should not be merged, and the Bank shall retain its rights pursuant to the lease assignment provided for in Section A4 above. The County will exercise due diligence and act in good faith to provide for the Bank's interest to be so maintained, including through the execution and delivery of agreements or instruments prepared by the Bank and reasonably designed to carry out the purposes and intents of this paragraph.

**D. Bank's further agreements.**

1. The Bank will send notice to the Owners of any notices of default sent by the Bank to the County under the Financing Agreement or this Agreement.

2. The Bank will send notice to the Owners promptly upon the County's payment of the Loan in full.



3. In connection with the County's original execution and delivery of the Financing Agreement, the County executed and delivered to the Bank a "Conditional Assignment of Construction Documents," related to the construction of facilities on the Site pursuant to the original Plans and Specifications. The Bank hereby releases all rights and claims it may have under such Conditional Assignment. In particular, the Bank consents to any full or partial releases granted by the Bank to counterparties under the "Construction Documents," as defined in the Conditional Assignment.

**E. Miscellaneous provisions.**

1. **Further Instruments.** Upon the Bank's request, the County and the Owners will execute, acknowledge and deliver such further instruments reasonably necessary or desired by the Bank to carry out more effectively the purposes of this Agreement or any other document related to the transactions contemplated hereby, and to subject to the liens and security interests hereof and thereof all or any part of any property intended to be given or conveyed hereunder or thereunder, whether now given or conveyed or acquired and conveyed subsequent to the date of this Agreement.

2. **Notices.** (a) Any communication required or permitted by this Agreement must be in writing.

(b) Any communication under this Agreement shall be sufficiently given and deemed given when delivered by hand or on the date shown on a United States registered mail delivery receipt, if addressed as follows:

(i) if to the Bank, to Post Office Box 31273, Charlotte, North Carolina 28231, Attention: Account Administration/Municipal, Re: Notice under Graham County Financing Agreement; or

(ii) if to the County or the Owners, to the respective addresses set forth in Part XI(A) of the Lease.

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the others.

3. **Amendments.** No term or provision of this Agreement may be amended, modified or waived without the prior written consent of all the parties.



4. **Governing Law.** The parties intend that North Carolina law will govern this Agreement.

5. **Covenants Running with the Land.** All covenants contained in this Agreement shall run with the real estate encumbered by the Lease or the Financing Agreement.

6. **Severability.** If any provision of this Agreement is determined to be unenforceable, that will not affect any other provision of this Agreement.

7. **Entire Agreement.** This Agreement, together with the Financing Agreement, the Lease and the First Refusal, constitutes the entire agreement of the parties with respect to the general subject matter covered hereby.

8. **Binding Effect.** This Agreement will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

9. **Bank's rights assignable.** The Bank may assign any rights granted to the Bank under this Agreement, in whole or in part. The Bank will notify the County and the Owners promptly of any assignment. For example, the Bank may assign its rights to renew the Lease under Section B3 above to any entity claiming possession of the Property through the Bank, and any such claiming entity will be free of restrictions on use of the Property set forth in the Lease through the operation of Section B5 above.

10. **Confirmation of Prior Agreements.** Except as modified by this Agreement, the terms and provisions of the Financing Agreement, the Lease and the First Refusal, and of all other agreements and instruments executed and delivered in connection therewith, are in all respects ratified and confirmed, and remain unchanged and in full effect.


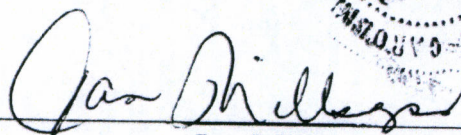
11. **Counterparts.** This Agreement may be executed in counterparts, including separate counterparts, all of which shall constitute but a single agreement.

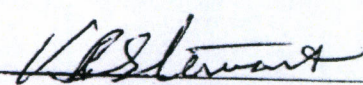
*[The remainder of this page has been left blank intentionally.]*



IN WITNESS WHEREOF, the parties have caused this instrument to be duly signed, sealed and delivered as of the day and year first above written.

ATTEST:

  
  
Jan Millsaps  
Clerk, Board of Commissioners

GRAHAM COUNTY,  
NORTH CAROLINA  
  
Richard Stewart  
Chairman, Board of Commissioners

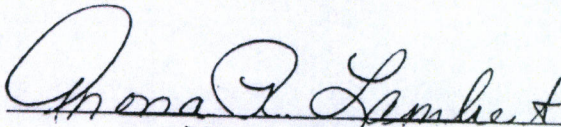
\* \* \* \* \*

STATE OF NORTH CAROLINA;  
GRAHAM COUNTY

I, a Notary Public of such County and State, certify that Richard Stewart and Jan Millsaps personally came before me this day and acknowledged that they are the Chairman and Clerk, respectively, of the governing Board of Commissioners of Graham County, North Carolina, and that by authority duly given and as the act of such County, the foregoing instrument was signed in the County's name by such Chairman, sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this 12<sup>th</sup> day of ~~December~~ <sup>JANUARY</sup>, 200~~3~~<sup>4</sup>



  
Notary Public

My commission expires: \_\_\_\_\_

My Commission Expires June 10, 2008

[Lease Assignment and Agreement dated as of ~~December 15, 2003~~ <sup>JANUARY 12, 2004</sup>]



Herve Cody (SEAL)  
Herve Cody

Claudine Cody (SEAL)  
Claudine Cody

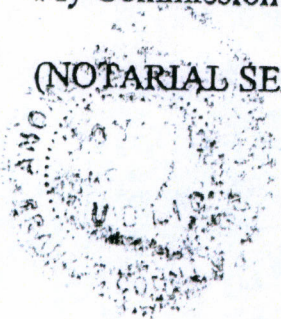
**STATE OF NORTH CAROLINA  
GRAHAM COUNTY**

I, Anona R. Lambert, a Notary Public of the aforesaid County and State hereby certify that HERVE CODY and CLAUDINE CODY personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Official seal, this the 12<sup>th</sup> day of <sup>JANUARY</sup> ~~December~~, 200<sup>4</sup>~~3~~.

Anona R. Lambert  
Notary Public

My Commission Expires: \_\_\_\_\_  
(NOTARIAL SEAL)



[Lease Assignment and Agreement dated as of <sup>JANUARY 12, 2004</sup> ~~December 15, 2003~~]



**BRANCH BANKING AND TRUST COMPANY**

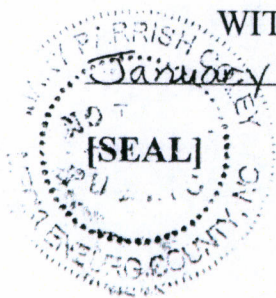
By: *F. Louis Loyd III*

Printed name: F. Louis Loyd, III

Title: Senior Vice President

**STATE OF NORTH CAROLINA;  
MECKLENBURG COUNTY**

I, a Notary Public of such County and State, certify that F. Louis Loyd, III, personally came before me this day and acknowledged that he is Senior Vice President of **Branch Banking and Trust Company**, and that he, as Senior Vice President being authorized to do so, executed the foregoing on behalf of such corporation.



WITNESS my hand and official stamp or seal, this 12<sup>th</sup> day of January, 2004.

*Marie Perish Coley*  
Notary Public

My commission expires: May 8, 2004

This contract has been approved under the provisions of Article 8, Chapter 159 of the General Statutes of North Carolina.

Janice T. Burke  
Secretary, North Carolina  
Local Government Commission

By \_\_\_\_\_

[Janice T. Burke or  
Designated Assistant]

[Lease Assignment and Agreement dated as of \_\_\_\_\_]



BRANCH BANKING AND TRUST COMPANY

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NORTH CAROLINA;  
\_\_\_\_\_ COUNTY

I, a Notary Public of such County and State, certify that \_\_\_\_\_  
personally came before me this day and acknowledged that he is  
\_\_\_\_\_ of **Branch Banking and Trust Company**, and that he, as  
\_\_\_\_\_ being authorized to do so, executed the foregoing on behalf  
of such corporation.

WITNESS my hand and official stamp or seal, this \_\_\_\_ day of December,  
2003.

[SEAL]

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

This contract has been approved under the  
provisions of Article 8, Chapter 159 of  
the General Statutes of North Carolina.

Janice T. Burke  
Secretary, North Carolina  
Local Government Commission

By Janice T. Burke  
[Janice T. Burke or  
Designated Assistant]

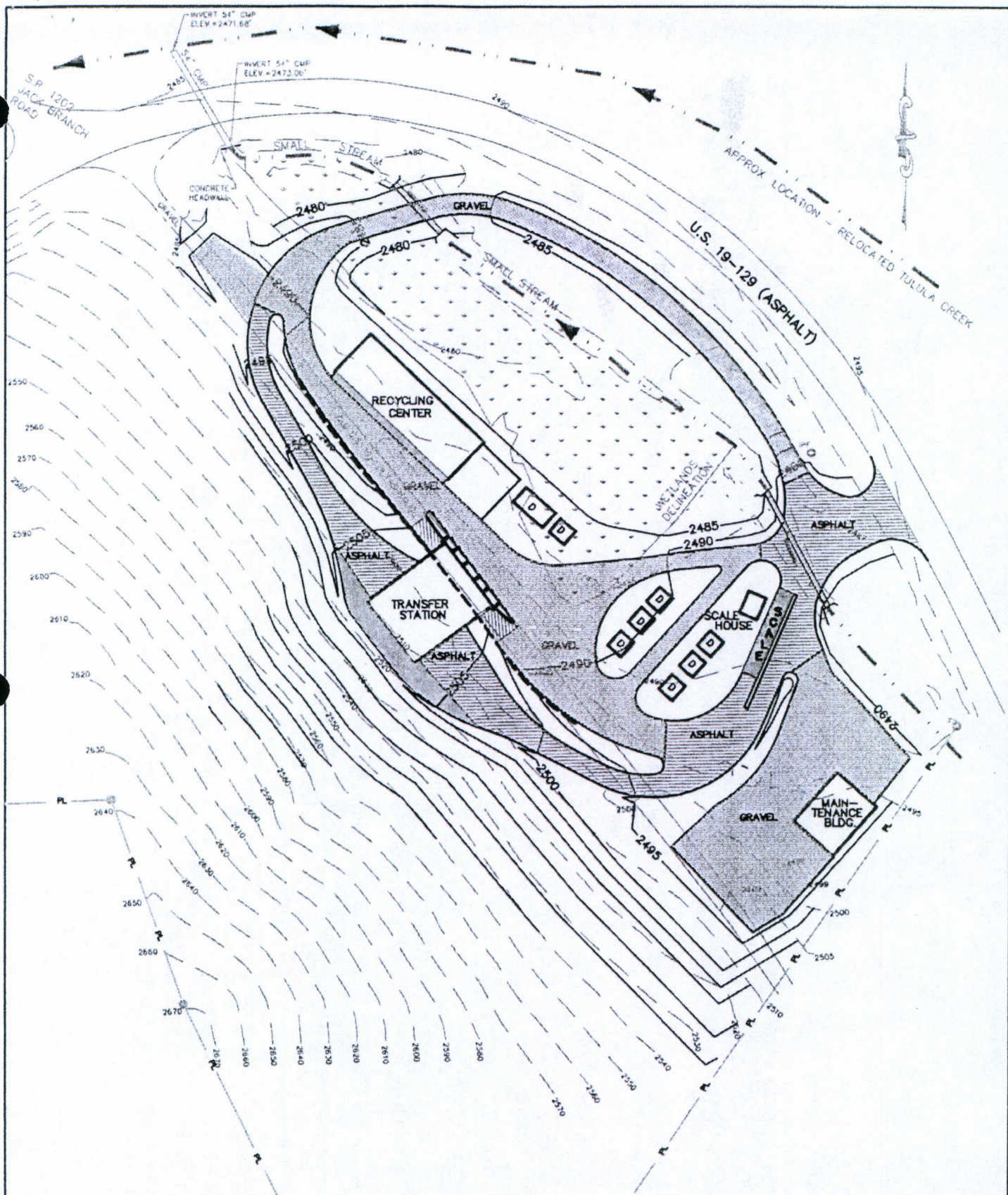
[Lease Assignment and Agreement dated as of December 15, 2003]



APPENDIX 5

New proposed site





SCALE: 1" = 100'

6/24/02

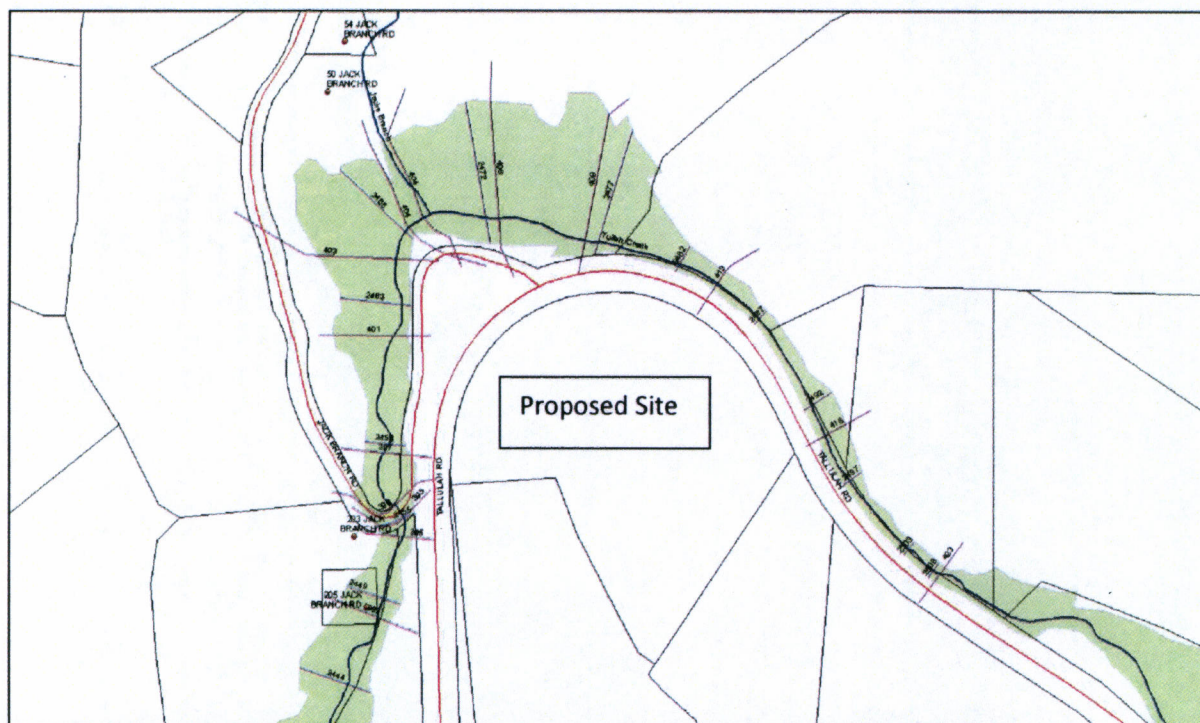
CONCEPTUAL  
SITE PLAN

SOLID WASTE TRANSFER STATION  
**GRAHAM COUNTY**  
GRAHAM COUNTY, NORTH CAROLINA

55 BROAD STREET  
ASHEVILLE, NC  
PH. (828) 252-0575  
FAX (828) 252-2518

**McGill**  
ASSOCIATES  
ENGINEERING-PLANNING-FINANCE





100 yr. Flood Zone







30

GRAHAM COUNTY NC

08/02/2001

\$270.00

This instrument prepared by:

Bobby J. Key

Attorney at Law

JONES, KEY, MELVIN &amp; PATTON, P.A.

Franklin, North Carolina 28734

Rev. \$270.00

Real Estate  
Excise Tax

NORTH CAROLINA, GRAHAM COUNTY

THE FOREGOING CERTIFICATE OF

James C. Millersaps  
Notary Public/Notaries Public is/are certified to be correct.This instrument was filed for registration on the 2nd day  
of August, 2001 at 10:00 o'clock

A.M. and recorded in this office in book 210

# 55890000 410701

WARRANTY DEED

STATE OF NORTH CAROLINA  
GRAHAM COUNTYCaralyn C. Stewart  
Register of Deeds

By: Pamela Adams, Deputy

THIS DEED, Made this, the 1<sup>st</sup> day of August, 2001, by ALVIN E. MESSER, unmarried

and CHARLES M. MESSER, unmarried, parties of the first part, to THE COUNTY OF  
GRAHAM, A body politic and political subdivision of the State of North Carolina, party of the  
second part; whether one or more; the neuter gender shall be deemed to include the masculine and  
feminine and the singular number the plural, and vice versa:

## WITNESSETH:

That the said parties of the first part in consideration of Ten Dollars and other valuable  
considerations, the receipt of which is hereby acknowledged, have bargained and sold, and by these  
presents do bargain, sell and convey unto said party of the second part, its heirs, successors and  
assigns, a certain tract or parcel of land in Cheoah Township, Graham County, State of North  
Carolina, being more particularly described as follows:

BEGINNING on a concrete right of way monument in the Southeast right of way of  
Highway 129, said beginning corner being located North 86 degrees 47 minutes 00  
seconds East 18.78 feet from U.S. Forest Service monument, Corner 18 of Tract  
1068, said beginning corner is also the beginning corner of the land described in the  
Deed from Joseph C. Dougherty to Alvin E. Messer and Charles M. Messer dated 30  
July, 1998 and recorded in the Office of Register of Deeds for Graham County, North  
Carolina in Deed Book 185, at Page 709; runs thence with the South margin of the  
right of way of Highway 129 the following nine (9) courses and distances, to-wit:  
North 00 degrees 47 minutes 00 seconds East 67.67 feet to a point, with a curve to  
the right having a radius of 445.58 feet, a length of 380.90 feet a chord of 369.40 feet  
with chord bearing North 25 degrees 16 minutes 20 seconds East to a point, North  
49 degrees 45 minutes 40 seconds East 14.38 feet to a point, with a curve to the right  
having a radius of 394.46 feet, a length of 293.92 feet and a chord of 287.16 feet with  
chord bearing North 71 degrees 06 minutes 26 seconds East to a point, with a curve  
to the right having a radius of 449.12 feet, a length of 430.57 feet and a chord of  
414.27 feet with chord bearing South 60 degrees 04 minutes 53 seconds East to a  
point, South 32 degrees 37 minutes 00 seconds East 7.66 feet to an iron pipe, South  
32 degrees 37 minutes 00 seconds East 53.85 feet to a point, South 29 degrees 34  
minutes 00 seconds East 53.22 feet to a point and South 27 degrees 13 minutes 00  
seconds East 130.16 feet to an iron pipe set on the Southwest margin of the right of  
way of Highway 129, said point being located in the West boundary of the property  
now or formerly owned by the Helen C. Bang Trust (Deed Book 172, Page 667  
Graham County Records); thence with the West boundary of said Helen C. Bang  
Trust parcel, South 33 degrees 30 minutes 00 seconds West 685.56 feet to an iron  
pipe set on a ridge, said point being located North 30 degrees 51 minutes 00 seconds



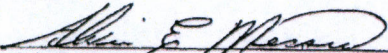
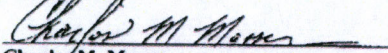
West 112.20 feet from another iron pipe on the ridge; thence running with the top of the ridge and the East boundary of U.S. Forest Service Tract 1068, the following four courses and distances, to-wit: North 55 degrees 23 minutes 00 seconds West 54.60 feet to a point, North 27 degrees 23 minutes 30 seconds West 259.04 feet to an iron pipe, continuing North 27 degrees 23 minutes 30 seconds West 97.67 feet to an iron pipe and North 20 degrees 39 minutes 00 seconds West 166.48 feet to an iron pipe, Corner 17 of U. S. Forest Service Tract 1068; thence South 86 degrees 47 minutes 00 seconds West 257.60 feet to a concrete right of way monument; thence continuing South 86 degrees 47 minutes 00 seconds West 16.00 feet to the point of BEGINNING, containing 11.72 acres more or less and being described herein as surveyed by Tuckasegee Surveying (William R. Howell, Registered Land Surveyor) and as shown on their unrecorded map dated May 2001, entitled "Graham County."

This conveyance is made subject to the easement for Highway 129 and for the easement of old Highway 129 (now abandoned).

**TO HAVE AND TO HOLD** the aforesaid tract or parcel of land and all privileges and appurtenances thereunto belonging, or in anywise thereunto appertaining, unto the said party of the second part, its heirs, successors and assigns, to their only use and behoof, in fee simple forever, subject to those exceptions, reservations, and limitations following the description hereinabove set forth.

And the said parties of the first part covenant with said party of the second part, its heirs, successors and assigns, that they are seized of said premises in fee, and have the right to convey the same in fee simple; that the same are free and clear from all liens and encumbrances, and that they will warrant and defend the said title to the same against the lawful claims of all persons whomsoever, subject to those exceptions, reservations, and limitations following the description hereinabove set forth.

**IN TESTIMONY WHEREOF**, the said parties of the first part have hereunto set their hands and seals, the day and year above written.

 (SEAL)  
Alvin B. Messer  
 (SEAL)  
Charles M. Messer